
OPINION OF THE PUBLIC ACCESS COUNSELOR

VANESSA HERNANDEZ-ORANGE,
Complainant,

v.

CITY OF EAST CHICAGO COMMON COUNCIL,
Respondent.

Formal Complaint No.
21-FC-14

Luke H. Britt
Public Access Counselor

This advisory opinion is in response to a formal complaint alleging the East Chicago Common Council violated the Open Door Law.¹ Attorney Alfredo Estrada filed an answer on behalf of the council. In accordance with Indiana Code § 5-14-5-10, I issue the following opinion to the formal complaint received by the Office of the Public Access Counselor on January 28, 2021.

¹ Ind. Code § 5-14-1.5-1-8.

BACKGROUND

This case involves a dispute about whether the East Chicago Common Council violated the Open Door Law (ODL) by voting on appointments to a local board and commission by phone and email.

Vanessa Hernandez-Orange (Complainant) alleges the Council announced that it selected the individuals that would sit on the Board of Works and Redevelopment on January 11, 2021. Hernandez-Orange alleges the Council made the appointments by secret vote, which councilmembers cast either by phone or by email to the City Clerk. Hernandez-Orange argues that the vote should have taken place during a public meeting. She submitted her complaint on January 28, 2021.

On March 8, 2021, Estrada denied Hernandez-Orange's claim that the Council violated the ODL. First, Mr. Estrada clarified that the City of East Chicago does not have a "Board of Works and Redevelopment," rather on January 11, 2021, the Council appointed representatives to the Board of Zoning Appeals and the Redevelopment Commission.

Irrespective of the names of the governing bodies, Estrada explained that it is common practice of councilmembers to call in or email the City Clerk their votes regarding appointments to boards or commissions. The City Clerk then records and tallies the votes. At the next Council meeting the City Clerk then announces the results. He confirmed this is what happened at the January 11 meeting, and none of the councilmembers object to the process. The final vote tally is shared with the Council and is made public, and a copy of

the “tally sheet” was provided to the Complainant in response to a public records request. Given that all details surrounding the appointment votes are shared publicly, the Council rejects any claims of wrongdoing on their part.

ANALYSIS

1. The Open Door Law

The Open Door Law (ODL) requires public agencies to conduct and take official action openly, unless otherwise expressly provided by statute, so the people may be fully informed. Ind. Code § 5-14-1.5-1. As a result, the ODL requires all meetings of the governing bodies of public agencies to be open at all times to allow members of the public to observe and record the proceedings. *See* Ind. Code § 5-14-1.5-3(a).

The City of East Chicago is a public agency for purposes of the ODL; and thus, subject to the law’s requirements. Ind. Code § 5-14-1.5-2. The East Chicago Common Council is a governing body for purposes of the ODL. *See* Ind. Code § 5-14-1.5-2(b). As a result, unless an exception applies, all meetings of the Council must be open at all times to allow members of the public to observe and record.

2. Meeting

Under the ODL, a meeting is “a gathering of a majority of the governing body of a public agency for the purpose of taking official action upon public business.” Ind. Code § 5-14-1.5-2(c). “Official action” means to: (1) receive information; (2) deliberate; (3) make recommendations; (4) establish policy; (5) make decisions; or (6) take final action. Ind. Code § 5-14-1.5-2(d).

Moreover “public business” means “any function upon which the public agency is empowered or authorized to take official action.” Ind. Code § 5-14-1.5-2(e).

3. Final action on public business

The facts in this complaint do not appear to be in dispute other than a clarification in the names of the governing bodies. The real issue here is whether the practice of emailing or calling in votes to a City Clerk is a proper voting practice.

Citizen members of local boards of zoning appeals are appointed in accordance with state statute. *See* Ind. Code § 36-7-4-902. The city’s legislative body gets one representative. The council oversees the redevelopment commission pursuant to Indiana Code section 36-7-14-3 and appoints its members.

Indeed, the Open Door Law expressly prohibits secret ballot voting. *See* Ind. Code § 5-14-1.5-3(b). Otherwise, the Open Door Law is relatively silent on voting procedures. What is clear, however, is that the vote itself must take place at an open public meeting.

The ODL defines “final action” as a “vote by the governing body on any motion, proposal, resolution, rule, regulation, ordinance, or order.” Ind. Code § 5-14-1.5-2(g). Additionally, the law requires a governing body to take final action at a meeting open to the public. Ind. Code § 5-14-1.5-6.1(c).

Votes for appointments to boards falls squarely within the definition of a final action. Populating memberships of other boards and commissions are the types of actions that require a public meeting.

What is more, a governing body must finalize its nominations in public as well. While executive sessions allow some discussion as to those nominees, it is limited to developing a potential list of prospective appointees, consider applications, and making a single exclusion from the list. *See* Ind. Code § 5-14-1.5-6.1(b)(10).

Reading the entirety of these statutes together, it is clear that our legislature intended the appointment process to play out in public rather than behind closed doors. As a result, the Council would be well-served to discuss candidates and qualifications during a meeting preceding a vote on final membership.

CONCLUSION

Based on the foregoing, it is the opinion of this office that the City of East Chicago Common Council's practice of voting for candidates violates the Open Door Law. Final action on public business must happen at a meeting open to the public.

A handwritten signature in black ink, appearing to be 'LH Britt', written in a cursive style.

Luke H. Britt
Public Access Counselor